IN THE

Supreme Court of the United States

October Term 1965

No. 282

HARRY J. AMELL, JAMES J. ALLWEIN, JACK E. BENNETT, CHALMERS O. DETLING, *et al.*,
Petitioners,

against

THE UNITED STATES

BRIEF OF MARITIME TRADES DEPARTMENT OF THE AFL-CIO, *AMICUS CURIAE*

SCHULMAN, ABARBANEL & KRONER,
50 Broadway,
New York, New York, 10004,
Counsel, Maritime Trades Department, AFL-CIO.

HOWARD SCHULMAN,
JACK L. KRONER,
JOHN ELIOT SANDS,
of Counsel.

INDEX

Cases Cited

Other Authorities Cited

IN THE

Supreme Court of the United States

October Term 1965

No. 282

HARRY J. AMELL, JAMES J. ALLWEIN, JACK E. BENNETT, CHALMERS O. DETLING, *et al.*,

Petitioners,

against

THE UNITED STATES

BRIEF OF MARITIME TRADES DEPARTMENT OF THE AFL-CIO, *AMICUS CURIAE*

Interest of *Amicus Curiae*

The Maritime Trades Department of the AFL-CIO submits this Brief as *amicus curiae* urging reversal of the Court of Claims' decision below.

The Maritime Trades Department of the AFL-CIO is a constituent body of that federation, comprising thirty-two seagoing and shoreside labor organizations representing approximately five million workers in the maritime industry and related trades. Four of its member unions—the Military Sea Transportation Union, the Marine Engineers Beneficial Association, the Staff Officers Association, and the International Organization of Masters, Mates & Pilots—represent a large number of the almost seven thousand employees of the federal government engaged directly in merchant shipping operations. The outcome of this case will

have an immediate and substantial impact on the future welfare of each of these employees, their families and the collective bargaining activities of their organizations. Based on this interest the Maritime Trades Department (AFL-CIO) requested permission to appear at this stage of the litigation as a friend of the Court. Both the Solicitor General's office and Petitioner's Counsel have consented to the filing of this *amicus* brief.

Argument

The question of law presented by the instant litigation is clear: Does the Court of Claims have jurisdiction over wage actions brought by United States Government employees who work aboard federally-owned and operated vessels? That legal question, however, conceals a much more fundamental issue: May federal employees pursuing wage claims be deprived of the liberal benefits of the six-year statute of limitations declared in the Tucker Act—and applicable to all other federal employees—because of the fortuity that they happen to be *seagoing* federal employees?

It is beyond cavil that for all other purposes the petitioning seamen, and others similarly situated, are treated as and have all the attributes of employees of the United States Government: They are forbidden, under pain of discharge, fine, and imprisonment, from exercising or asserting the right to strike enjoyed by all employees in the private sector.[1] As Government employees, their right to join unions and select representatives exists only by express leave of the President.[2] Their rates of pay are strictly controlled by federal statutes,[3] and there is no opportunity for traditional collective bargaining over wage

[1] 69 Stat. 624, 625, 5 U. S. C. §§ 118p-118r.

[2] Exec. Order 10988, 27 Fed. Reg. 551 (1962).

[3] 63 Stat. 954, 5 U. S. C. § 1082(2) and other provisions generally contained in 5 U. S. C.

rates. Although wages are geared to the prevailing rates of pay in private shipping operations, government employees may realize only prospectively and to a limited degree the gains won in the industry at large. In other words, if private contract negotiations continue beyond the termination date of superceded agreement—as is often the case in the maritime industry—the final contract always provides for the retroactive effect of wage increases. Although this requires a significant, back-dated addition to "prevailing" rates of pay, Government-employed seamen receive the benefits of such increases only from the actual day on which agreement is reached in the private sector.

Nor do Government seamen enjoy the fringe benefits negotiated for their privately-employed counterparts. As employees of the United States, they have been strictly limited, with respect to sick leave, vacation, death, health, medical and pension benefits, to the programs provided by statute for all federal Government employees.[4] It is common knowledge that the fringe benefit plans set up by the federal Government, although deemed adequate by some, do not approach the standards achieved through collective bargaining in the private maritime industry.

Those in Petitioner's situation are also strictly treated as federal employees with respect to claims for personal injuries. In the landmark case of *Johansen* v. *United States*, 343 U. S. 427 (1952) this Court held, at page 428, with respect to civil service employees employed on United States *public* vessels "that the benefits available to such seamen under the Federal Employees' Compensation Act of 1916, 39 Stat. 742, 5 U. S. C. § 751 *et seq.*, 5 U. S. C. A.

---

[4] Annual and Sick Leave Act of 1951, as amended, 65 Stat. 679, 5 U. S. C. §§ 2061-2071; Federal Employees Group Life Ins. Act of 1954, as amended, 68 Stat. 736, 5 U. S. C. §§ 2091-2103; Civil Service Retirement Act, as amended, 70 Stat. 743, 5 U. S. C. §§ 2251-2268; Federal Employees Health Benefits Act of 1959, 73 Stat. 709, 5 U. S. C. §§ 3001-3014.

§ 751, *et seq.*, are of such a nature as to preclude a suit for damages under the Public Vessels Act." In *Patterson* v. *United States*, 359 U. S. 495 (1959), petitioners had been employed aboard *merchant* ships operated by the United States and were pursuing their remedy under the Suits in Admiralty Act. This Court again held such seamen to be federal employees and therefore limited to the remedies provided in the Federal Employees' Compensation Act. The rule of *Johansen* v. *United States*, *supra*, was expressly reaffirmed at 359 U. S. 496:

> "The considerations which led to that conclusion [in Johansen] are equally applicable to cases where the government vessel is engaged in merchant service. The United States 'has established by the Compensation Act a method of redress for employees. There is no reason to have two systems of redress.' 343 U. S. at page 439, 72 S. Ct. at page 856."

This Court, in *Patterson*, went on to observe, at pages 496 and 497:

> "If civilian seamen employed by the government are to be accorded rights different from or greater than those which they enjoy under the Compensation Act, it is for Congress to provide them."

The instant litigation presents an analogous claim—this time propounded by a defendant—that the Suits in Admiralty Act created a new and exclusive remedy for seamen in an area for which Congress had long before made ample and explicit provision with the Tucker Act of 1887, 24 Stat. 505, as amended, 28 U. S. C. §§ 1346, 1491.

A further argument in favor of Petioners lies in the limited nature of Federal District Court jurisdiction.

It must be emphasized at the outset that the district courts of the United States are courts of limited jurisdiction; they may rule only on those cases or controversies that

the federal Constitution or Acts of Congress have placed within the scope of their power. When Congress has reserved particular disputes from this strictly defined area of jurisdiction, the affected courts of the United States are powerless to act.[5]

With respect to the present controversy, just such a situation exists. In 24 Stat. 505 (1887), now 28 U. S. C. § 1346, Congress has explicitly set forth one facet of District court jurisdiction:

> "(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:
>
> * * *
>
> "(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated damages in cases not sounding in tort."
>
> * * *

The district courts, therefore, are powerless to consider such cases as these involving more than $10,000.

Where the district courts' jurisdiction terminates however, Congress has seen fit to extend the jurisdiction of the Court of Claims into an area of *exclusive* competence. At 28 U. S. C. § 1491:

> "The Court of Claims shall have jurisdiction to render judgment upon *any claim* against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." [Emphasis supplied]

---

[5] 1 MOORE'S FEDERAL PRACTICE, ¶ 0.60[3].

It is clear, therefore, from the very face of the statutes, that the Court of Claims enjoys exclusive jurisdiction of all claims against the United States exceeding $10,000 in amount, "founded . . . upon any express or implied contract with the United States."

In *Bruner* v. *United States*, 343 U. S. 112 (1952), the Supreme Court expressly placed wage claims by employees of the federal government within the sweeping ambit of this rule. A 1951 amendment to the Tucker Act had withdrawn from the jurisdiction which the federal district courts exercise concurrently with the Court of Claims:

> "[A]ny civil action or claim to recover fees, salary, or compensation for official services of officers or employees of the United States."[8]

The effective date of this amendment fell between the granting of petitioner's request for certiorari and the date the case was argued. This Court noted that Congress, in passing the amendment, had failed *expressly* to reserve the district court's jurisdiction of such pending matters and held that:

> "[a]bsent such a reservation, only the Court of Claims has jurisdiction to hear and determine claims for compensation brought by employees of the United States even though the District Court had jurisdiction over such claims when petitioner's action was brought. Merchant's Insurance v. Ritchie, 1867, 5 Wall. 541, 18 L. Ed. 540." 343 U. S. 112 at 115.

In the face of this solid barrier of hornbook law the United States now argues that the effect of the Suits in Admiralty and the Public Vessels Acts, *supra*, was to remove wage claims of federal Government employees who happen to be seamen from the exclusive jurisdiction of the

---

[8] 28 U. S. C. § 1346(d)(2), 65 Stat. 727.

Court of Claims and to place such actions exclusively within that of the district courts. This it cannot do.

The Court, in *Johansen* v. *U. S.*, 343 U. S. 427, at 431, 432, with specific reference to the Public Vessels Act, wrote:

> "[The] general language . . . must be read in the light of the central purpose of the Act as derived from the legislative history of the Act and the surrounding circumstances of its enactment. * * * [T]his Act was one of a number of statutes which attest 'to the growing feeling of Congress that the United States should put aside its sovereign armor in cases where federal employees have tortiously caused personal injury or property damage.' [American Stevedores, Inc. v. Porello, 330 U. S. 446, at page 453.] *These enactments were not usually directed toward cases where the United States had already put aside its sovereign armor*, granting relief in other forms. With such a legislative history one hesitates to reach a conclusion as to the meaning of the Act by adoption of a possible interpretation through a literal application of the words. * * * [T]he most that can be said * * * is that Congress did not specifically exclude such claimants from the coverage of the Public Vessels Act." [Emphasis supplied]

It will be remembered that this Court expressly reaffirmed the holding of *Johansen* in the case of *Patterson* v. *United States*, 359 U. S. 495 (1959), where the identical issue was at stake, but the Government vessel was engaged in merchant service and therefore subject to the Suits in Admiralty Act.[7]

The same policies inherent in the Public Vessels Act provide the foundation of the Suits in Admiralty Act as well. "The Suits in Admiralty Act and the Public Vessels Act are not to be regarded as discreet enactments treating related situations in isolation," wrote the late Mr. Justice

---

[7] See page 4, *supra*.

Frankfurter for a unanimous Court in *Calmar S.S. Corp. v. United States,* 345 U. S. 446, at page 455. They constitute "manifestations of a single larger purpose, jointly forming a rational system free of random omissions and exceptions." *Id.* at page 451. This Court held in *Patterson* and *Johansen* that neither Act supplanted the exclusive remedy which Congress provided seamen employed by the United States through the Federal Employees' Compensation Act. It should not now hold that either Act deprives such persons of the exclusive remedy for wage claims provided by Congress in the Tucker Act.

The federal Government's intention in the instant litigation cannot be disguised. It wants its seagoing employees to be classified as "federal employees" for purposes of compensation, liability for personal injuries, and labor-management relations; in short, in all cases in which the Government benefits and the employees do not. But when the issue is payment of back-due wages, Respondent executes a *volte-face* and argues that they are not really "federal employees" but "seamen." Expediency, the benefits of a short statute of limitations, not logic or reason, supports such an ambivalent approach.

It must not be ignored that these federal employees are indeed seamen, and that, with the escalation of the present conflict in Vietnam, their number has steadily increased. They are subpect to the same occupational hardships and hazards as are their counterparts in the private maritime industry. They spend months at a time in foreign waters, far from the advice of competent legal counsel and far from the court houses where they must go to initiate suits to recover back wages due from their employer. In ports the world over, literally hundreds of American seamen lie injured in hospitals, again far removed from any opportunity to commence suit for the vindication of their rights against employers. The delay from the time their claims

accrue to the time they may be in a position to implement them is obviously likely to increase under these conditions.

And yet Respondent urges in the instant litigaton that such men be denied the benefit of the liberal six-year statute of limitations applicable to wage claims of all other federal employees, and be bound instead by a two-year statute. Such a contention ill behooves the Government for which these brave men daily risk their lives.

CONCLUSION

For these reasons, the Maritime Trades Department of the AFL-CIO respectfully urges that this Court reverse the decisions of the Court of Claims and remand the cases for consideration on the merits.

Respectfully submitted,

SCHULMAN, ABARBANEL & KRONER,
50 Broadway,
New York, New York, 10004,
Counsel, Maritime Trades Department, AFL-CIO.

HOWARD SCHULMAN,
JACK L. KRONER,
JOHN ELIOT SANDS,
of Counsel.